

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELISA W., *et al.*,

Plaintiffs,

15 Civ. 5273 (LTS) (HBP)

-against-

THE CITY OF NEW YORK, *et al.*,

Defendants.

**DECLARATION OF MARCIA ROBINSON LOWRY
IN SUPPORT OF NAMED PLAINTIFF CHILDREN'S
RENEWED MOTION FOR CLASS CERTIFICATION**

I, Marcia Robinson Lowry, declare the following:

1. I am Executive Director of the non-profit organization A Better Childhood, Inc. ("ABC"), an advocacy organization devoted to helping reform child welfare systems on behalf of abused and neglected children. I am co-counsel for Elisa W.; Alexandria R., by her next friend, Alison Max Rothschild; Thierry E., by his next friend, Amy Mulzer; Lucas T., Ximena T., Jose T.C. and Valentina T.C., by their next friend, Rachel Friedman; Ayanna J., by her next friend, Meyghan McCrea; Olivia and Ana-Maria R., by their next friend, Dawn Cardy; Xavion M., by his next friend, Michael B. Mushlin; Dameon C., by his next friend, Reverend Doctor Gwendolyn Hadley-Hall; Tyrone M., by his next friend, Bishop Lillian Robinson-Wiltshire; Brittney W., by her next friend, Yusuf El Ashmawy; Mikayla G., by her next friend, Amy Mulzer; Myls J. and Malik M., by their next friend, Elizabeth Hendrix; and Emmanuel S. and Matthew V., by their next friend, Samuel D. Perry, individually and on behalf of a class of all others similarly situated ("Plaintiff Children") in the above-captioned matter. I submit this Declaration in Support of Plaintiff Children's Renewed Motion for Class Certification.

2. The proposed class consists of children who are now or will be in the foster care custody of the Commissioner of New York City's Administration for Children's Services ("ACS") and two subclasses consisting of: (1) all children who have been in the custody of ACS for more than two years, whose cases are entitled to "special scrutiny" by the Contract Agencies according to ACS policy; and (2) all children for whom Contract Agencies failed to assess and document at least every three months compelling reasons justifying the decision not to file a termination of parental rights petition after the children had been in care for 15 of the prior 22 months, a violation of ACS policy.

3. I have the extensive experience and background to adequately represent the proposed class, with the assistance of the considerable legal resources of Cravath, Swaine & Moore LLP ("Cravath").

4. Cravath is a leading national law firm with over 400 lawyers. The firm has extensive experience in complex civil litigation and class action lawsuits. The firm is also extensively involved in pro bono matters. Cravath has previously provided pro bono legal assistance in major class action litigation representing incarcerated individuals with psychiatric disabilities and indigent and criminal defendants. *See, e.g., Messiah S. v. Alexander*, No. 07-1327 (S.D.N.Y. filed Feb. 22, 2007); *Duncan v. Michigan*, No. 07-000242-CZ (Mich. Cir. Ct. County of Ingham filed Feb. 22, 2007); *White v. Martz*, No. CDV-2001-0133 (Mont. 1st Judicial Dist. Ct. Lewis and Clark County filed Feb. 14, 2002).

5. For more than 40 years, I have been litigating and directing litigation of class action child welfare reform cases alleging claims similar to those alleged by Plaintiff Children in the present action. I have achieved system-wide federal court settlements in lawsuits asserting significant deficiencies in the child welfare systems of New Jersey (*Charlie H. v. Christie*, No.

99-3678 (D.N.J. filed Aug. 4, 1999)); Tennessee (*Brian A. v. Haslam*, No. 00-445 (M.D. Tenn. filed May 10, 2000)); Atlanta, Georgia (*Kenny A. v. Perdue*, No. 02-1686 (N.D. Ga. filed June 19, 2002)); Mississippi (*Olivia Y. v. Barbour*, No. 04-251 (S.D. Miss. filed Mar. 30, 2004)); Michigan (*Dwayne B. v. Snyder*, No. 06-13548 (E.D. Mich. filed Aug. 8, 2006)); and Oklahoma (*D.G. v. Yarbrough*, No. 08-074 (N.D. Okla. filed Feb. 13, 2008)). In the District of Columbia, I am monitoring a broad-ranging federal court order requiring reform of the child welfare system following a trial on the merits. *LaShawn A. v. Gray*, No. 89-1754 (D. D.C. filed June 20, 1989). I am also co-lead counsel in a statewide class action alleging systemic deficiencies in the Texas child welfare system, in which plaintiffs recently received a favorable decision after a trial on the merits. The case is now pending in the Fifth Circuit. *M.D. v. Perry*, No. 11-084 (S.D. Tex. filed Mar. 29, 2011). I am also currently co-lead counsel in cases alleging systemic deficiencies in the Minneapolis child welfare system (*T.F. v. Hennepin County*, No. 17-1826 (D. Minn. filed May 31, 2017)), Oregon child welfare system (*Wyatt B v. Brown*, No. 19-0556 (D. Or. filed April 16, 2019)), and Indiana child welfare system (*Ashley W. v. Holcomb*, No. 19-129 (S.D. Ind. filed June 25, 2019)). In addition, I was lead counsel in two major lawsuits, now closed, concerning the New York City child welfare system. *Marisol A. v. Giuliani*, No. 95-10533 (S.D.N.Y. filed December 13, 1995); *Wilder v. Bernstein*, No. 78-957 (S.D.N.Y. filed Mar. 3, 1978).

6. As a result of my extensive experience and current research, I am knowledgeable about the applicable law, both in the Second Circuit and in federal courts nationally.

7. ABC, working closely with attorneys from Cravath, has engaged in an in-depth investigation of the child welfare system in New York City. Hundreds of attorney hours have been spent meeting with sources knowledgeable about the system, compiling and analyzing relevant facts and documentation and researching and developing legal claims alleged in Named

Plaintiff Children's Amended Class Action Complaint for Injunctive and Declaratory Relief.

Named Plaintiff Children have reviewed over one million pages, including the case files of each of the 19 Named Plaintiff Children, produced by City Defendant and over 260,000 pages produced by State Defendant and taken 13 depositions of current and former employees of ACS and OCFS, and 11 depositions of representatives of each of the Contract Agencies who have or had a Named Plaintiff Child in their care. Counsel has also retained experts to opine on the significance of permanency in a child's development and to review the case records of Named Plaintiff Children. ABC, along with Cravath, is fully prepared to prosecute this matter on behalf of the Plaintiff Children in the proposed class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of July 2019, at New York, New York.


Marcia Robinson Lowry